SUPREME COURT OF THE UNITED STATES.

No. 115.

THE UNITED STATES, APPELLANTS,

vs.

FRANCES R. TILLOU ET AL. EXECUTORS OF HENRY ECKFORD, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

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It appears in the petition of the claimants that the deceased Henry Eckford had, in his lifetime, made application to Congress for compensation for the use and occupation of certain lands by the United States; that his executors, after his decease, continued their application to Congress, and that on the 29th day of August, 1842. an act was passed and approved authorizing the payment of 3,783 97-100 dollars in full for the rent of two places included in the application, and also the payment of 181 62-100 dollars per annum for the rent of another place, as long as it should be retained, but that the act had not been acceded to or accepted by the executors or legal representatives of the deceased, Henry Eckford, (Record, p. 4;) that subsequently a suit was commenced by the United States against the said executors, as representatives of the said Eckford, who had been surety upon the official bond of Samuel Swartwout, a defaulting officer; and that upon the trial the jury found a verdict against the United States, and certified that a balance was due the said executors of twenty thousand five hundred and forty-five dollars and fifty-nine cents, upon which verdict and certificate a judgment was entered.

The petitioner also states (Record, p. 7) that in the year 1852 a further application to Congress was made by the said executors for an act of appropriation for payment of the said judgment and certain expenditures in the defence of said suit; that it was presented to the Senate and referred to the Committee on Claims; that that committee,

on the tenth day of August, 1852, reported that the "judgment of Congress, in view of the whole facts of the case, had been deliberately given, and should be held conclusive and final; that the matter upon which the certificate of the jury was given was not properly before it, or submitted for their action; that the opinion of the jury that the defendants, as surety for Samuel Swartwout, were not indebted, was an end of the case so far as they had any control over it; that their verdict furnished no evidence of indebtedness on the part of the government; that it is an extra-judicial opinion of jurors, sworn to try an issue of which this formed no part;" and that the act passed in 1842 provided for the payment of a liberal compensation for the use of the property of the said Eckford, and recommended the passage of a resolution that the executors were not entitled to the relief sought.

Subsequently, an action in the Court of Claims was brought against the United States by the executors of the said Henry Eckford, deceased, and a judgment obtained for the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents, the precise amount of the certificate of the finding of the jury in the case of the United States against the said executors.

The certificate of the Court of Claims, its findings of fact and law, although not in exact compliance with the rules of the Supreme Court, will enable this court to ascertain the precise issue which is made in this appeal, which is whether the Court of Claims could found a judgment solely upon the judgment which is set out in its certificate. The certificate of the court is as follows:—(Record, p. 14.)

In June, 1839, the United States brought an action in the Circuit Court of the United States for the southern district of New York, on the official bond of Samuel Swartwout, as collector of the port of New York, against Henry Eckford's executors, whose testator had been one of the sureties in that bond. The action was to recover moneys which Swartwout had received as collector, and had embezzled. The defendants interposed various pleas, among others that the moneys embezzled by the collector were received after his reappointment, and at a time when the defendant's testator was not surety.

They also pleaded a set-off, claiming a large amount due to their testator from the United States on several accounts, and especially for the occupation of real estate. The cause, after various delays, was brought to trial on the first Monday of April, 1845. It resulted in a verdict for the defendants, and the jury certified that there was due from the United States to the defendants the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents, ($20,545 59.) The defendants' counsel moved for judgment on the verdict, and the counsel of the United States for a new trial, and the cause was thereupon continued, from time to time, until the the 12th day of October, 1849.

On that day the circuit entered judgment on the verdict in the following words:

"It is considered by the said Circuit Court, before the said judges thereof now here, that the United States of America take nothing by their said bill, and that the defendants do go thereof without day; and that the said surviving executors are entitled to be paid the said balance so certified by the jurors aforesaid, in form aforesaid, to be due from the United States of America to and in favor of the said executors as aforesaid.

"Judgment signed this 12th day of October, A. D. 1849.

"RICHARD E, STILLWELL, *Deputy Clerk.*"

On the hearing of the cause in the Court of Claims, the United States, by their solicitor, objected to the admission in evidence of the exemplification of the proceedings and judgment in the said Circuit Court of the United States, for the following reasons:

1st. That said record purports to be a judgment against the United States in favor of said executors for the sum of $20,545; but these defendants say that said record shows no such judgment as entitles the plaintiffs to read it in evidence on the trial of this cause.

2d. Because said record is not a judgment, but only the finding of a jury.

3d. Because the issue upon which the suit set forth in said transcript was decided was *non est factum*, and the jury found that the bond upon which said suit was instituted was not the deed of Henry Eckford.

4th. Because it does not appear from said record that the claim attempted to be set off in said suit had ever been presented to the Treasury Department for allowance, as required by the second section of the act of Congress passed March 3, 1797.—(1 Stat. at Large, 514.)

5th. Because the claim or demand attempted to be set off in the suit against said executors was not legally admissible as a set-off in said suit.

6th. Because said record is, for other reasons, insufficient, imperfect, and informal.

But the said court overruled said objections, and permitted said claimant to read said record in evidence, to which said decision of said court in overruling said objections, and permitting said claimants to read said record in evidence, the said defendant, by its solicitor, then and there excepted.

Upon these facts the Court of Claims decided—

1st. That the Circuit Court of the United States had jurisdiction of the subject-matter of the suit, and the set-off pleaded.

2d. That the finding of the jury and the determination of the court constituted in substance and effect a valid and binding judgment against the United States for the sum of twenty thousand five hundred and forty-five dollars and fifty-nine cents, ($20,545 59.)

3d. Such judgment remaining unsatisfied and unreversed, could not be impeached in this collateral suit.

4th. That the jurisdiction of the Circuit Court to hear and try the case being undisputed, and the set-off being founded on matters of fact, upon which issue was joined, and the same having been submitted to and found by the jury, their finding of the same was conclusive, and was not subject to re-examination in any court of the United States, by virtue of the provision of the 7th article of the amendments to the Constitution of the United States."

ARGUMENT.

The jurisdiction of the Court of Claims is limited by express legislation to claims founded either upon a law of Congress, a regulation of an executive department, or upon a contract, express or implied, with the government of the United States. Any claim, however, may be referred to the Court of Claims by either House of Congress.

This claim was not referred, but has already become the subject of a law. By the act of August 29, 1842, Congress fixed the amount which is due to the executors of the estate of Eckford, and the Court of Claims was thereby estopped from taking jurisdiction. Its judgment was in derogation of a law of Congress.

It would be a violent assumption to regard the judgment of the Circuit Court of the United States upon the verdict set out in the finding of facts of the Court of Claims as one of those judgments which constitute a contract of record within the definition of the elementary writers, and the judicial decisions of this country and England. It is not one of those debts or contracts which cannot in pleading be impeached or effected by any supposed defect or illegality in the transaction on which they are founded, and that even if it be erroneous, that circumstance will afford no answer to an action of debt upon it, and that the only course for the defendant to reverse it is by writ of error.

When this judgment was rendered there was no tribunal that had authority to render a judgment against the United States. There was no strict legal right even to permit a set-off, except where actions had been commenced by those who were sued by the United States in a fiduciary capacity.

In this case the Court of Claims, as will be seen by its findings of

law, decided that there could be no inquiry as to the basis of the judgment, but that a judgment should be entered upon it as a matter of course. It refused to consider any evidence as to the merits of the claim, but regarded it as having all the solemnities of a judgment at common law, and decided that it was protected by the seventh article of the amendments to the Constitution from all inquiry and examination in any court of the United States, except according to the rules of the common law.

So far from the certificates of juries in cases where the United States are plaintiffs, having this inviolabilty, there is not a case to be found in which these certificates have passed under review, where inquiry has not been made as to whether the facts were of a nature to warrant the finding.

It is difficult to perceive how the judgment of the Court of Claims is to be sustained, unless this court overrules its own decisions.

In the case of Reeside *vs.* Walker, (11 Howard, 290,) the court says:

"It is well settled, too, that no action of any kind can be sustained against the government itself for any supposed debt, unless by its own consent under some special statute allowing it, which is not pretended to exist here.—(Briscoe *vs.* Kentucky Bank, 11 Peters, 321; 4 Howard, 288; 9 Howard, 389.)

"The sovereignty of the government not only protects it against suits directly, but against judgments even for costs when it fails in prosecutions.—(3 Howard, 288.)

"Such being the settled principle in our system of jurisprudence, it would be derogatory to the courts to allow the principle to be evaded or circumvented. To permit a demand in sett-off against the government to be proceeded on to judgment against it, would be equivalent to the permission of a suit to be prosecuted against it. And, however this may be tolerated between individuals, by a species of reconvention, where demands in set-off are sought to be recovered, it could not be as against the government, except by a mere evasion, and must be as useless in the end as it would be derogatory to judicial fairness."

In the case of DeGroot *vs.* the United States, (5 Wallace, 431,) this court says:

"The government of the United States cannot be sued for a claim or demand against it without its consent. This rule is carried so far by this court that it has been held that when the United States is plaintiff in one of the federal courts, and the defendant has pleaded a sett-off, which the acts of Congress have authorized him to rely on, *no judgment can be rendered against the government*, although it may be judicially ascertained that on striking a balance of just demands the government is indebted to the defendant in an ascertained amount. And if the United States shall sue an individual in any of her courts, and fail to establish a claim, no judgment can be rendered for the costs expended by the defendant in his defense."

This case of DeGroot also affirms the complete power of Congress over a case in the Court of Claims at every stage in the proceedings; it can withdraw from its jurisdiction a single case or class of cases.

This case has been clearly withdrawn from the Court of Claims. Congress has itself adjudicated upon its facts by an act of Congress, fixing the amount due to the appellees.

E. P. NORTON,
Solicitor for the United States.

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Supreme Court of the U. S.

THE UNITED STATES,
Appellants,
vs.
FRANCIS R. TILLOU, &c.,
Executors of Henry Eckford, Esq., Deceased,
Respondents.

STATEMENT AND POINTS OF RESPONDENTS.

This is an appeal by the United States from a judgment of the Court of Claims, rendered on the 6th day of February, 1866, in favor of the respondents for twenty thousand five hundred and forty-five dollars and fifty-nine cents ($20,545.59.)

The history of the case is as follows: During the last war between the United States and Great Britain, Henry Eckford constructed several vessels of war for the United States Government on Lake Ontario, among which were two ships of the line, called the *New Orleans* and *Chippewa.*

One of them was built at a place called Navy Point, and the other at Stoor's Harbor, near Sackett's Harbor, on Lake Ontario. The tract of land at Stoor's Harbor contained about three hundred acres, and the parcel called Navy Point contained a few acres of land. Both of these parcels were purchased by Commodore, then Captain,

Chauncey, for the United States, for the purpose of providing places to build and launch these vessels. There was timber on the Stoor's Harbor property which was used in part in the construction of these ships. They were built by Mr. Eckford for the United States, not as contractor, in the sense of receiving a certain sum for the vessels, but he, furnishing the materials, paid the men, and personally superintended the construction of the ships, the bills being paid by the government. The total cost of these two parcels of land, with the dock and erections put thereon by the United States, was something over $11,000. These ships, the *New Orleans* and *Chippewa*, were completed about the time that peace was declared and were never launched.

From this time, in 1815, the vessels remained on the stocks; that at Stoor's Harbor until January, 1833, when she was broken up; that at Navy Point till May, 1845, when the property was sold by the executors of Mr. Eckford to the United States, it, in the meantime, having been used as a navy post.

When Captain Chauncey's accounts came to be settled with the officers of the government, they declined to allow the sums paid by him for these purchases of land, and thereupon Mr. Eckford took the property at cost. He died in 1832. The respondents are his surviving executors. Mr. Eckford received rent from the United States for the Navy Point property, from 1815 to 1823, which was computed at the rate of six per cent. upon its cost, which is all the rent that has been paid for the occupation of the property by the United States. In 1839, a suit was brought by the United States against the executors of Mr. Eckford, in the District Court of the United States for the Southern District of New York, to recover the penalty of a bond executed by Mr. Eckford with others as sureties of Samuel Swartout. To this the defendants opposed the plea of *non est factum*, as well as a set-off under the act of Congress of 1797. A trial was had upon the merits, in which it was shown that Mr. Swartout's defalcations commenced after

the term of office for which the bond in suit was given had expired, and the jury found in favor of the defendants upon that issue. Evidence was given of the occupation by the United States of Mr. Eckford's property as above set forth, under the set-off pleaded, and they found a balance due the defendants of $20,545.59. For this sum, and the amount legally due thereon, the claimants brought there action in the Court of Claims.

On the part of the respondents there was offered in evidence, on the trial in the court below, the record in the Circuit Court of the United States in the suit between the United States and the claimants above referred to, as evidence on the part of the claimants of the debt due from the United States.

This was admitted by the court, and the sole question before this court, presented on this appeal, is whether such record was competent evidence before the Court of Claims.

By referring to the copy of the judgment record furnished to the court, it will be seen that it is complete in form and substance, according to the practice of the State in which it was rendered. The declaration at page two (2) is in an action of debt on bond for the recovery of the sum of one hundred and fifty thousand dollars, assigning breaches.

To this is pleaded *non est factum*, with notice of special matter, including a set-off on page ten (10) for the rent in controversy, and on page fifteen (15) the notice specially avers that the said defendants "did previous to the commencement of this suit, to wit: on the 1st day of March, 1839, and oftentimes since, in due form of law, present their account of the said indebtedness of the said defendants to the Secretary of the Navy of the United States, and to the Secretary of the Treasury of the United States, and to the Fourth Auditor of the Treasury Department of the United States, and at their respective offices in the City of Washington, did then and there

request of them respectively the settlement, payment and satisfaction thereof, which they and each of them then and there refused to do, and the same was rejected by the said Fourth Auditor."

On page eighteen (18) the record proceeds as follows: "And the jurors of the jury to try the said issue whereof mention is above made, being summoned, also came, who, to speak the truth of the matters above contained, being elected, tried, and sworn upon their oaths, say, as to the issue above joined between the parties aforesaid, that the said supposed writing obligatory, in the said declaration mentioned, is not the deed of the said Henry Eckford. And they certify a balance due from the United States to and in favor of the said defendants, as surviving executors aforesaid, of twenty thousand five hundred and forty-five dollars and fifty-nine cents ($20,545.59.)"

And after reciting several continuances and the denial of a motion for a new trial, it concludes as follows: "It "is considered by the Circuit Court, before the said Judges "thereof now here, that the United States of America "take nothing by their said bill, and that the defendants "do go thereof without day, &c., and that the said sur- "viving executors are entitled to be paid the said balance "so certified by the jurors aforesaid, in form aforesaid, to "be due from the United States of America to, and in "favor of, the said exeeutors as aforesaid."

"Judgment signed this 12th day of October, A. D. 1849.

"RICHARD E. STILLWELL,
"Deputy Clerk."

The suit of which the above is the record was tried in the State of New York.

The Revised Statutes of that State (second R. S. of N. Y. 356, original paging), provides as follows: "If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof."

Therefore a record setting forth the amount "found by the jury," followed by the formal words: "It is considered by the Court that the defendant is entitled to be paid the same by the plaintiff," and this followed by the word "judgment," duly signed by the proper officer, is a perfect judgment in all essential particulars.

A judgment is defined to be "the sentence of the law as pronounced by the court upon the matter contained in the record," and, as to form, has been well described as follows: "Beside the time and place, a judgment should exhibit the parties, the matter in dispute, and the result, for the form is immaterial, and every Court may pursue its own formula" (1 Bayley, 7, Ordinary *vs.* M'Clure).

In the case of the United States *vs.* The Bank of the Metropolis (15 Peters, 377), which, in all respects, is like the case at bar, "the jury found a verdict for the defendant, and certified there was due from the United States to the bank $3,371·94, with interest from March 6th, 1838." On page 406, after stating the opinion of the court, the report of the case concludes as follows:

"This cause came to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia, holden in and for the County of Washington, and was argued by counsel; on consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said Circuit Court in the cause be, and the same is hereby, confirmed."

By the Act of Congress, 1797, it is provided that where an action is brought by the United States against a person indebted to them, the defendant may *set off all credits* to which he may be equitably entitled, which have been submitted to the consideration of the accounting officers of the treasury, and rejected by them (1st Statutes at Large, pages 414 and 415).

By the 34th section of the Judiciary Act of 1789 (1st Statutes at Large, page 92) it is provided, that the laws

of the several States, except where the constitution, treaties, or statutes of the United States shall otherwise require or provide, *shall be regarded as a rule of decision in trials at common law in the Courts of the United States in cases where they apply.*

By the Statute of Set-off, in the State of New York (2nd R. S. 356, original paging), above quoted, it is provided: "If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered to the defendant for the amount thereof."

Looking, therefore, at this legislation it will be seen that this judgment record must have precisely the same force and effect, as evidence, against the United States, as if both of the parties to it were its citizens. For, by the Judiciary Act, Congress provided that the laws of the several States should be regarded as a rule of decision in trials at common law in the Courts of the United States, where they apply; and, a few years thereafter, they further provided, that wherever the United States brought a defendant into Court, asking for judgment against him, such defendant might set off against the United States all credits that were equitably due such defendant. Referring then to the laws of New York, where the case was tried, it is found that where a plaintiff brings an action against a defendant, and the defendant proves against the plaintiff a larger debt than the plaintiff has against him, the *defendant shall have judgment for such excess.*

The record presented in this case is in literal conformity with the provisions of this legislation.

All controversies before a judicial tribunal look to judgment. Such is the end and aim of the proceeding. It is in contravention of the whole scheme of jurisprudence to say, that where parties capable of suing or being sued submit the questions between them to the arbitration of the law, no valid judgment can be rendered upon the issne.

If a sovereign power brings its action against one of its

citizens, it is for the purpose of inviting the decision of the Court and obtaining judgment, and the proceedings to trial and judgment must be in all respects the same as if the suit were between individuals.

In the absence of special legislation, the defendant in such a case could not take judgment against the United States on a counter claim, because a sovereign power may not be sued without its consent; but if such sovereign should enact, by the proper form of legislation, that any one may bring an action against it, the result of such action thus brought, if prosecuted to its conclusion, must be in pronouncing the sentence of the law upon the issues, which is judgment.

And so too if such sovereign should authorize, by its legislative power, any person against whom it should commence an action to set off all claims which such person should have against it, it would necessarily authorize and invite the sentence of the law upon such set off; and if such action were brought in a State where, by its rule of decision, a defendant could recover against the plaintiff a judgment for such amount as the set off should exceed the plaintiff's claim, then in such case the party so proceeded against would be entitled to judgment upon such set off.

The fallacy in the argument submitted by the solicitor for the United States consists in confounding the sentence of the law with the power of enforcing it. It is argued that, because execution cannot be issued upon the judgment, it is therefore a nullity. Nothing can be more unsound.

A sovereign may ask and take by judicial proceedings just such a judgment as an individual may take; if it attempt to enforce it, it must, like an individual, take a step which is beyond the judgment, to wit, process of execution. In the case of Mills *vs.* Duryea, 7th Cranch, 481, Mr. Justice Story says: "The right of the Court depends upon its own powers and organization. Its judgments

may be complete and perfect, and have full effect independent of the right to issue execution."

And so it may authorize a judicial proceeding in which a judgment may be rendered against it, which judgment shall have all the incidents of a judgment, among others that of being the highest evidence known to the law, of the facts found upon the issues tried. But when the step subsequent to the judgment comes to be taken, to wit, the enforcement of it against property, the shield of its sovereignty is interposed. In a constitutional government like that of the United States, the provision that no money can be paid from its treasnry, except it be appropriated by Congress, of itself stands in the way of enforcing the execution of such a judgment. But Congress may make an appropriation for the payment of such judgment, or, as in the case now before the Court, may constitute a tribunal before which all persons may prosecute their claims, and when judgment is rendered upon such claims, provide for the payment of them out of a general appropriation made for such purpose.

And this brings us precisely to the point under discussion.

The executors of Mr. Eckford having a claim against the United States, brought their action in its Court of Claims, and, in support of their claim, presented the record of an action brought by the United States against such exeeutors, in the State of New York, to which they had pleaded a set off, with the notice that the same had been presented to, and disallowed by, the accounting officers of the treasury. This action had been tried before judges of the Courts of the United States, and a certain sum had been found to be due from the United States to such executors, for which judgment had been rendered, and the record of this judgment was tendered as the best evidence known to the law of the facts found by such judgment, and as such it was received by the Court below.

This ruling is abundantly supported by the adjudications of this Court.

In the case of the United States against Wilkins, (6th Wheaton, 135,) Judge Story, in construing the act under which we offered and proved our set-off, says: "The terms of these sections are very broad and comprehensive. The 3rd section manifestly supposes that not merely legal but equitable credits ought to be allowed to debtors of the United States by the proper officers of the Treasury, and the 4th section *prohibits no claims for any credits* which have been disallowed at the Treasury from being given in evidence by the defendants on the trial. There being no *limitation as to the nature and origin of the* CLAIM *for a credit which may be set up in a suit*, we think it a reasonable construction of the act that it intended to allow the defendant the *full benefit* at the trial of any credits which may be set up in the suit, whether arising out of the *particular transaction* for which he was sued, or out of any distinct and independent transaction which would constitute a legal or equitable set-off, in whole or in part, of the debt sued for by the United States. The object of the act seems to be to liquidate and adjust all accounts between the parties, and to require a judgment for such sum only as the defendant, in equity and justice, should be proved to owe the United States."

In the case of the United States *vs.* Robeson, (9 Peters, p. 424,) Justice McLean says: "Where a defendant has in his own right an equitable claim against the Government for service rendered, or otherwise, and has presented it to the proper officer of the Government, who has refused to allow it, he may set up the claim as a credit on a writ brought against him for any balance of money claimed to be due to Government."

Those cases distinctly recognize the right of the defendant to plead and prove his set-off in this action; and the right to plead and prove his set-off involves the right to have the sentence of the law pronounced upon it, as was done by the Circuit Court.

These cases also show that if the defendants' claim for credits ~~credits~~ amounts to more than the claim of the United States, he may have judgment for the excess, if the law of the State where the cause is tried permit it. Else, in the language of the Court, how can the defendant on the trial have "the full benefit of any credit he may have;" or how can "all the accounts between the parties be liquidated and adjusted by the trial?"

Next, it is contended that the set off section of the act of 1797 is not intended to operate as a complete set-off in favor of a party sued by the United States, but goes only to the *reduction* of the plaintiff s claim *pro tanto*. This is manifestly unsound. The word "credits" is as comprehensive as any that could be used to embrace the entire amount of the legal and equitable claims of the defendant against the United States. Any other view might work great injustice, because, to a claim on the part of the United States the defendant would be compelled to interpose the whole amount of his credits, and if they exceeded the plaintiff's charges by a general verdict for the defendant, there would be no means of determining the amount allowed by the jury in reduction, and thereby destroy his claim upon the Government for the balance. As in this case, if the jury had found a general verdict for the defendant, the inference would have been that they found the amount due from Mr. Eckford to the United States was balanced by his claim against the Government, and any claim he might have subsequently set up, would have been answered by this suggestion.

But this section has received a judicial interpretation which sets it at rest in the opinions in the cases already quoted, (to which I again particularly refer,) where they construe the act as intending to give the parties an opportunity to "*adjust and liquidate* all their accounts.

The Supreme Court, in the case in 6 Wheat., page 135, United States against Wilkins, say, that the act of 1797 allows claims or credits by way of set off, founded on transactions independent of those which are the subject of the suit, by the Government.

Why SUCH ALLOWANCE, if Congress did not intend to have *all the accounts* adjusted in one suit, and the correct balance ascertained either for or against the Government? It is not the policy of the law or the intention of law-makers to multiply legal proceedings. Nor could it have been the intention of Congress to have the claims of the Government against an individual adjusted before one tribunal, and the claims of the same person against the Government adjusted before another tribunal.

As an additional and conclusive authority to show that the set-off act does not apply to the *reduction* merely of a claim of the United States, see United States *vs.* Bank of the Metropolis (15 Peters, 377), where *the jury certified a balance due the defendants from the United States, and the judgment upon the certificate was affirmed by the Supreme Court.*

Judge Wayne says, in that case: "When the United States, by its authorized officer, became a party to negotiable paper, they have all the rights and incur all the responsibility of individuals who are parties to such instruments. We know of no difference, except that the United States cannot be sued. But if the United States sue, and a defendant holds its negotiable paper, *the amount of it may be claimed as a credit if, after being presented, it has been disallowed by the accounting officers of the treasury: and if the liability upon it has not been discharged by some of those causes which discharge a party to commercial paper, it should be allowed by the jury as a credit against the debt claimed by the United States.*" *It*, not a part of it, should be allowed; and as, in that case, *it* amounted to more than the debt of the United States, the whole amount was allowed by the jury, the balance certified, and the judgment affirmed.

This case is in principle conclusive of the case now before the Court upon all points. As reported it appears that the jury "found a verdict for the defendant, and certified there was due from the United States to the Bank $3371·94, with interest from March 6th, 1838.

On page 406, after stating the opinion of the Court, the entry upon the finding of the jury is expressly recognized as a "judgment" in the extract heretofore given upon page 5 of this brief.

This question was decided also in the case of Mary Reeside, Ex. against the United States (1st Devereux, p. 216), which case was fully considered, after the judgment of the Court of Claims, in Congress, when the appropriation was made for paying the amount of the judgment.

I refer also to the able opinion of Casey, Chief J., in the case delivered in the Court below.

SAMUEL E. LYON,

Of Counsel for Respondents.